Supreme Court, U.S.
FILED
NOV 2 - 2005
OFFICE OF THE CLERK

No. 05-574

IN THE

Supreme Court of the United States

BREEZEVALE LIMITED,
Petitioner,

v.

TIMOTHY L. DICKINSON, *et al.*
Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR WRIT OF CERTIORARI

LESLIE A. POWELL
DIANA M. SCHOBEL
LAW OFFICES OF LESLIE A. POWELL
115 North Market Street
Frederick, Maryland 21701
(301) 668-7575

STEPHEN D. SUSMAN
Counsel of Record
JEFFREY R. SEELY
TIBOR L. NAGY
SUSMAN GODFREY L.L.P.
1000 Louisiana Street
Suite 5100
Houston, Texas 77002
(713) 651-9366

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

1. Whether and to what extent the exercise of a court's inherent power to sanction is restricted by the Seventh Amendment when the case turned on disputed facts and witness credibility and the jury found the bad faith conduct to be immaterial and entered judgment in favor of the plaintiff.

2. Whether Breezevale's due process rights were violated when the trial court denied it an evidentiary hearing prior to imposing both the sanction of dismissal and a multi-million dollar punitive sanction award for bad faith litigation.

3. Whether bad faith conduct must be material before a court can exercise its inherent power to dismiss a case and impose a multi-million dollar punitive sanction award.

4. Whether, consistent with the due process constraints on punitive damages, Breezevale was entitled to a more "exacting appellate review" of the various punitive sanctions imposed by the trial court than was performed by the District of Columbia Court of Appeals.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner:

Breezevale Limited

Respondents:

Timothy L. Dickinson, John C. Millian, John F. Olson, Theodore B. Olson, William J. Kilberg, Peter J. Wallison, Joseph H. Price, Cantwell Faulkner Muckenfuss, III, Peter L. Baumbusch, Richard L. Dashefsky, Christopher H. Buckley, David R. Johnson, Donald Harrison, Wayne A. Schrader, Peter H. Turza, Daniel Q. Callister, Howard B. Adler, John H. Sturc, Larry L. Simms, Robert Crosby Eager, Baruch A. Fellner, Robert C. Bonner, Michael L. Denger, Ricki Rhodarmer Tigert, Arthur David Pasternak, Terence P. Ross, James David Gibbs*[1], Raymond B. Ludwiszewski, Phillip Howard Rudolph

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

Wesley G. Howell, Jr., Norman B. Barker*, John L. Endicott, John L. Hanson, Robert S. Warren, Willard Z. Carr, Jr., Edward G. Fitzgerald, Ronald E. Gother*, Stephen E. Tallent, Robert E. Cooper*, Ronald S. Beard, Russell L. Johnson*, John H. Sharer, Roy D. Miller*, Herbert Kraus, Irwin F. Woodland, James M. Murphy, Robert K. Montgomery*, Dean Stern, Andrew E. Bogen*, Fred F. Gregory*, Kenneth W. Anderson, Bruce A. Toor, James G. Phillipp, David A. Cathcart*, Steven Alan Meiers, Arthur L. Sherwood*, James R. Martin, Richard D. Hall*, R. Randall Huff, Robert Forgnone, Charles C. Ivie, C. Ransom Samuelson, II*, Marc

---

[1] If an asterisk appears, it means that the named defendant was not served with process. The named individuals are or were members of the law firm of Gibson, Dunn & Crutcher.

R. Isaacson, James C. Opel, Martin Carl Washton, Wayne W. Smith*, Richard Paul Levy, S. David Blinn, Ronald S. Orr, John T. Behrendt, Aulana L. Peters*, Fred Gilbert Bennett, Bennett L. Silverman, Peter F. Ziegler, Phillip Bosl, William F. Highberger*, Rex S. Heinke*, Dennis B. Arnold*, Jane Lindsay Wingfield*, Pamela Lynn Hemminger*, Robert Harold Fairbank, Daniel M. Kolkey, Dhiya El-Saden, Dean J. Kitchens, Jeffrey Reid Hudson*, Charles A. Larson, Terrance L. Carlson, Maureen McGuirl, Lesley Sara Wolf, Anne K. Hilker, Peter Sullivan*, Gary L. Justice*, Jonathan K. Layne, Joel S. Moskowitz*, Gail Elle' 'ees*, Marjorie Ehrich Lewis, David West*, William Edward Wegner, Elizabeth A. Grimes*, Hatef Behnia, Joel A. Feuer*, J. Nicholson Thomas, Susan Erburu Reardon*, Karen E. Bertero, Anthony J. Wall, Mark Erich Weber, Stephen L. Tolles*, Cheryl D. Justice, Michael A. Monahan*, Stephen B. Givens, Rory Michael Hernandez, Brian D. Kilb*, Scott A. Edelman, Amy R. Forbes, Bradley, D. Schwartz, Joerg H. Esdorn*, Daniel S. Floyd*, William R. Lindsay*

333 South Grand Avenue
Los Angeles, California 90071-3197

and

Robert D. Burch, Jerome C. Byrne, Charles S. Battles, Robert T. Gelber, Paul G. Bower, Jack H. Halgren, Roy J. Schmidt, Jr.*, John A. Ruskey, John J. Swenson*, Stephen M. Blitz*, Lester Ziffren, Richard A. Strong*, William Stinehart, Jr.*, John Edd Stepp*, Richard Chernick, Bruce D. Meyer*, Don Parris, Michael D. Ryan, Scott August Kruse*, James P. Clark*, Kirk A. Patrick, Thomas E. Holliday, Madeleine Ann Kleiner*, Nancy P. McClelland*, Mary Laura Davis*, Shari Leinwald*, Russell C. Hansen*, Jeffrey C. Briggs*, Kenneth M. Doran, Steven Eugene Sletten*, Michael Patrick McNamara, Meldon E. Levine, Jennifer Bellah, Thomas Satrom, Mark S. Pecheck, Daniel G. Swanson*, Kenneth R. Lamb

2029 Century Park East
Century City, California 90067

and

Kenneth E. Ristau, Thomas B. Pitcher, Richard G. Duncan*, Ralph C. Wintrode, Blake T. Franklin, John C. Wells, Michael J. Brennan, Dennis A. Gladwell, Gerard J. Kenny*, Gordon A. Schaller*, Steven C. McCracken, Robert W. Loewen*, Robert Everett Dean, Thomas D. Magill*, William D. Claster*, Joseph P. Busch*, III, Larry C. Boyd*, E. Michael Greaney, Susan Lee Waggener, Karen H. Clark*, Mark W. Shurtleff, Walter L. Schindler*, Jeffrey T. Thomas, Craig H. Millet, Lucie H. Moore, Robert E. Palmer

4 Park Plaza
Irvine, California 92714

and

Charles R. Collins*, Bruce L. Gitelson*, Lawrence Calof*, Jonathan M. Landers*, Lawrence W. Keeshan*, Donald E. Sloan*, Fred L. Pillon*, Christopher J. Martin*, Scott A. Fink*, William D. Connell*, Joel S. Sanders*, Kathryn Anne Coleman*

One Montgomery Street
San Francisco, California 94104

and

Michael E. Alpert*, J. Anthony Sinclitico, III*, Meryl L. Young*, Rhonda S. Wagner*, David B. Pendarvis

750 B. Street, Suite 3300
San Diego, California 92101

and

Peter J. Thurston*, Christopher J. Martin*, Shirley Hanna Buccieri*

3000 Sand Hills Road
Building 1, Suite 285
Menlo Park, California 94025

and

Wesley G. Howell, Jr., Charles K. Marquis, Thomas E. Gallagher, Lee B. Spencer, Jr., C. Ransom Samuelson II, Robert D. Sack, John A. Herfort, Jonathan L. Sulds, Charles F. Feldman, Conor D. Reilly, Steven R. Finley, John J.A. Hossenlopp, Bruce D. Bolander, H. Richard Dallas, J. Keith Morgan, Mitchell A. Karlen, Robert L. Weigel, Michael C.P. Ryan, Lawrence J. Hohlt, Jerry J. Strochlic, Robert Bruce Vernon, Steven P. Buffone, David B. Rosenhauer

200 Park Avenue
New York, New York 10166

and

George W. Bermant*, David G. Palmer*, Pamela A. Ray*, Craig R. Carver*, Richard Michael Russo*, George B. Curtis*, John Fognani*, Gregory J. Kerwin*

1801 California Street, Suite 4200
Denver, Colorado 80202

and

Dwight L. Nye*, David R. McAtee*, Irwin F. Sentilles, III*, Stephen C. Johnson*, Harold F. Degenhardt*, Scott R. Hoyt*, Paul D. Inman*, Thomas C. McGraw*, Michael A. Barrett*, Ray T. Khirallah*, Martin B. McNamara*, Michael A. Rosenthal*, Robert B. Krakow*, M. Byron Wilder*, David I. Schiller*, John R. Crews*

1717 Main Street, Suite 5400
Dallas, Texas 75201

and

Michele C. Coyle*
999 Third Avenue, Suite 2500
Seattle, Washington 98104

and

Anthony Bonanno*, Wendy M. Singer*, Mitri J. Najjar*, Paul R. Harter*

30/35 Pall Mall, SW1Y 5LP
London, England

and

Bernard Grinspan*
104 Avenue Raymond Poincare
75116 Paris, France

and

Albert Theodore Powers*, Clark T. Randt, Jr.*
Two Exchange Square, 29th Floor
8 Connaught Place, Hong Kong

and

Hubertus Jan Van Der Vaart*
Avenue Louise 66 bte 5,
B-1050, Brussels, Belgium

and

Walter L. Stratton
Andrews & Kurth L.L.P.
425 Lexington Avenue, 10th Floor
New York, New York 10017

and

Thomas W. Craddock*
McGuire, Craddock, Strother & Lutes, P.C.
Thanksgiving Tower, Suite 4175
1601 Elm Street
Dallas, Texas 75201

and

Douglas Clark Neilsson*
One Montgomery Street
San Francisco, California 94104

and

S. Craig Tompkins
333 S. Grand Avenue
Los Angeles, California 90071

and

John E. Burns
333 S. Grand Avenue
Los Angeles, California 90071

and

Mark Edward Warren*
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

Steven Todd Johnson*
705 2d
Seattle, Washington 98104

and

Michael G. Yoder
Pettis, Tester, Kruse & Krinsky
18881 Van Karman Avenue
Irvine, California 92715

RULE 29.6 STATEMENT

Breezevale Limited is held by T & T Nominees, Limited and Tower Holdings, Limited as Nominees for T & T Trustees Limited, trustees for the Bou Habib Family Trust. No publicly held company owns 10% or more of petitioner's stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	ii
RULE 29.6 STATEMENT	viii
TABLE OF AUTHORITIES	xiii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	7
I. THIS COURT SHOULD RESOLVE WHETHER A COURT'S INHERENT POWER TO SANCTION CAN TRUMP THE SEVENTH AMENDMENT WHEN THE JURY HAS CONSIDERED AND REJECTED THE DEFENSES ON WHICH THE EXERCISE OF THE INHERENT POWER IS FOUNDED	7
II. THIS COURT SHOULD RESOLVE THE SPLIT IN CIRCUIT COURTS CONCERNING WHETHER A LITIGANT SUBJECT TO SIGNIFICANT SANCTIONS IS ENTITLED TO AN EVIDENTIARY HEARING	12

TABLE OF CONTENTS—Continued

Page

III. THIS COURT SHOULD RESOLVE THE SPLIT IN THE CIRCUITS AS TO WHETHER THE BAD FAITH CONDUCT MUST BE MATERIAL TO JUSTIFY THE DISMISSAL OF A CASE PURSUANT TO THE COURT'S INHERENT POWERS 18

IV. THIS COURT SHOULD FIND THAT LITIGANTS SUBJECT TO SUBSTANTIAL SANCTIONS ARE ENTITLED TO AN "EXACTING APPELLATE REVIEW" OF PUNITIVE SANCTION AWARDS 24

CONCLUSION 30

APPENDIX A

Breezevale Ltd. v. Dickinson, 879 A.2d 957 (D.C. 2005) 1a

APPENDIX B

Memorandum Opinion, Order and Judgment, April 10, 2003 ..... 23a

APPENDIX C

Breezevale Ltd. v. Dickinson, 783 A.2d 573 (D.C. 2001) 46a

APPENDIX D

Breezevale Ltd. v. Dickinson, 759 A.2d 627 (D.C. 2000) 51a

APPENDIX E

Memorandum Order of Judgment, November 26, 1997 ..... 77a

TABLE OF CONTENTS—Continued

Page

APPENDIX F

Memorandum Order on Defendants' Motions for Judgment and, Alternatively, New Trial, May 2, 1997 ..... 91a

APPENDIX G

Memorandum Order on Defendants' Counterclaim May 2, 1997 ..... 110a

APPENDIX H

Trial Transcript Pages, September 9, 1996 ..... 126a

APPENDIX I

Jury Instructions 132a

APPENDIX J

Verdict Form 158a